

Notice of Allowability

Application No.

10/735,997

Examiner

Christopher J. Novosad

Applicant(s)

SIMONE, JOHN J.

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on September 23, 2005.
2. ☒ The allowed claim(s) is/are 21-35.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

In the claims:

In claim 26, line 1, the recitation "1" has been corrected to --21--. Otherwise, claim 26 would depend from a canceled claim, canceled claim 1.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Supplemental to Applicant's arguments in the "Remarks" traversing the 35 USC 103(a) rejections of the claims, new independent claim 21 has been allowed primarily because the prior art of record fails to disclose or suggest a "scoop for use of non-horizontal work surfaces" which "consists of" the specific and exclusive structure recited in (a)-(d) of the claim. The recitation, "consists of," in the preamble of the claim excludes structure other than that recited, particularly the closed container structure disclosed in the primary reference to Hollenberg, in contrast to the limitation in the last two lines of new claim 21 of "the scoop structure having an *open front and open top*" (emphasis added). Therefore, in view of the "consists of" exclusionary preamble language, it would not be obvious to one of ordinary skill in the art, but in fact would be

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counterproductive or destructive, to modify the closed container structure of Hollenberg to have *an open front and open top*, as required in claim 21.

Moreover, as already argued in the "Remarks" by applicant, "The reference to Eichin et al relates to non-analogous art. It relates to ice-cream scoops made of rigid metal. The Examiner's position that Eichin et al discloses an aluminum ice-cream scoop wherein it would be obvious to modify Hollenberg's flexible paperboard containers to be aluminum is untenable. The combination of these references is improper because Hollenberg does not teach a scoop, because there is no motivation to combine, and because making Hollenberg's foldable, collapsible containers out of rigid aluminum is contrary to and entirely defeats the purpose of Hollenberg's invention."

Moreover, weight must be given to the angle ranges specified in the claims since these angles are critical to Applicant's invention. Note the disclosure "It is the combinations of angles A, B, and C that enable the present invention to have such diverse applications and uses" in page 12, lines 8 and 9 of Applicant's specification.

New dependent claims 22-35 (dependent on new independent claim 21) have been allowed for the same reason as new parent claim 21 noted above.

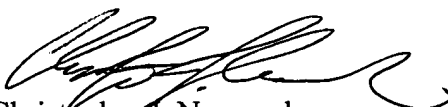
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher J. Novosad whose telephone number is 571-272-6993. The examiner can normally be reached on Monday-Thursday 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached at 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher J. Novosad
Primary Examiner
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December 12, 2005